

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.835 OF 2004

1. Prakash Vishnu Datar,
Aged 47 years, Occ: Advocate,
r/o 10, Arvind Niwas,
Malegaon, Dist: Nasik.
2. Uday Dattatray Kulkarni,
Aged 42 years, Occ: Advocate,
r/o Sugandh, Behind LIC Office,
Malegaon, Dist: Nasik.
3. Vijay Laxman Kulkarni,
Aged 40 years, Occ: Advocate,
r/o 913, Sanmitra Society,
Behind State Bank of India,
Malegaon, Dist: Nasik.
4. Shabbir Khan Etbar Khan Kardar,
Aged 50 years, Occ: Advocate,
r/o 201 Hazar Kholi, Malegaon,
Dist: Nasik. Petitioners

- Versus -

1. The State of Maharashtra
2. Sr. Inspector of Police,
Chavni Police Station,
Malegaon, Dist: Nasik.

3. Shri Rajesh Ratanlal Kale,
II JMFC & CJJD, Malegaon,
Dist: Nasik. Respondents

Sarvasri P.K. Dhakephalkar with N.P. Shimpi,
Advocates for the Petitioners.

Shri B.H. Mehta, Addl. Public Prosecutor,
for the Respondent Nos.1 and 2.

The Respondent No.3 absent, though served.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: APRIL 06, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard the learned Advocate for the petitioners and the learned A.P.P.. Neither the respondent No.3 present nor any Advocate on his behalf, though served. The respondent No.3 has also not filed any affidavit in-reply.

2. By the present petition, the petitioners seek to quash the FIR bearing No.II C.R.No.3027/2004, registered with the Chavni police station, Malegaon, District Nasik against the petitioners on 19-4-2004.

3. The petitioners are the practising lawyers at the Malegaon Bar and have been in practice for the last number of years. The petitioner No.3 is the Secretary of the Malegaon Bar Association whereas the petitioner No.4 is the Vice-President of the Malegaon Bar Association. At the relevant time, the respondent No.3 was functioning as the J.M.F.C. and II C.J.J.D. at Malegaon.

4. There were various complaints filed against the said respondent No.3 in relation to his functioning as the Judge as well as regarding his attitude towards the Advocates appearing in his Court. Pursuant to such complaints, inquiry was ordered by the High Court and under the letter dated 15-4-2004, issued by the District and Sessions Judge, Nasik, the said respondent was informed that all the civil and criminal matters pending on the file of his Court were transferred to the file of another Court for the disposal thereof and it was further informed to him that all the new presentations and institutions which were to be presented before the Court of the said respondent would be allotted to another Court. Similarly, all the staff attached to his Court was also ordered to be attached to another Court to which the matters in the Court of the said respondent were allotted for disposal thereof. The said communication was received by the respondent on

16-4-2004. Three days thereafter, the said respondent lodged a complaint with the Chavni police station at Malegaon against the petitioners alleging the petitioners having committed the offence including those punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, hereinafter referred to as "the Atrocities Act" and therefore the said FIR came to be registered.

5. While assailing the impugned FIR, the learned Advocate for the petitioners submitted that the incident narrated in the complaint is purely a concocted one and the same is apparent from the records placed before this Court as well as the conduct of the said respondent which is revealed from the materials on record. He further submitted that none of the petitioners were at the concerned site on the relevant day and time, and all of them were at a totally different place, as has been described in the petition and the contents of the petition have not been denied by the respondent No.3 though served. The fact that the said respondent was interested in getting the petitioners somehow entangled in a case under the Atrocities Act was apparent from the conduct of the respondent and the threats in that regard which he used to give in the open Court to the petitioners. Further even the inquiry conducted by this Court has resulted in his dismissal on account of the

misbehaviour on the part of the said respondent. In any case, the complaint on the face of it nowhere discloses any offence under the Atrocities Act or any other statute and therefore the same should be quashed.

6. Attention was also drawn to the complaint which was addressed by the Malegaon Bar Association to the Administrative Judge of this Court on 7-4-2004 wherein the fact regarding the threats of the complaint under the Atrocities Act, at the instance of the said respondent, were clearly mentioned.

7. Normally this Court is reluctant to interfere to quash an FIR or a complaint once it is shown that ex facie the same discloses a cognizable offence. It is also well-settled that the writ Court is not expected to analyse the contents of the complaint to ascertain whether the complainant would be able to establish the allegations made therein or not. It is also well-settled that in a matter where the petitioner, who is named as an accused in an FIR seeks to quash the FIR is not entitled, as a matter of right, to place reliance on any material other than the FIR itself or the material accompanying the FIR to justify the quashing of the FIR. However, at the same time, it is also to be borne in mind that when the plea raised in the petition challenging the FIR is supported by cogent material on

record which could apparently reveal the allegations in the complaint to be fallacious and having been made with the sole intention to harass the petitioner, and the investigation on the basis of such FIR would not lead to any fruitful result but sheer harassment to the petitioner, then certainly interference by the High Court in writ jurisdiction would not only be appropriate but would be necessary. The view that we are taking in the matter is clearly fortified by the recent decision of the Apex Court in the matter of **Netai Dutta v. State of West Bengal**, reported in 2005 AIR SCW 1326.

8. Perusal of the complaint filed by the respondent undoubtedly discloses the allegation of utterances of some objectionable words by some of the petitioners, like "Mahardya". It also discloses expressions like, "Dekho Kaisa Ja Raha Hai Bhadwa", "See how the impotent is going". The complaint also alleges that the complainant was abused by mentioning his caste and he was insulted. The complaint also discloses that the complainant is a Hindu Mahar by caste. However, the complaint on the face of it nowhere discloses that the petitioners did not belong to the Scheduled Caste or the Scheduled Tribe nor the complaint discloses that the utterances were in a place within the public view. Undoubtedly, the utterances are alleged to have been made in an open place, at about 20:25 hours. However,

it is nowhere disclosed that the incident was either in the presence of any third party or any other person, such person being present either in the vicinity or even at a far distance.

9. The provisions of Section 3(1)(x) of the Atrocities Act are attracted and an offence can be said to have been committed when a person, not being a member of a Scheduled Caste or Scheduled Tribe intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within public view. The expression "public view" essentially requires that the act on the part of the accused person must be seen by a third party so as to cause insult or humiliation to the person belonging to the member of the Scheduled Caste or Scheduled Tribe on account of such acts. Any open place or for that matter even a public place by itself would not be sufficient to arrive at the finding about commission of such offence but it must be a place in a public view. In the absence of any third person having occasion to perceive the acts causing insult or intimidation resulting in humiliation to a member of the Scheduled Caste or the Scheduled Tribe, there could be no occasion to warrant action under the Atrocities Act under the said provision of law.

10. Perusal of the complaint apparently discloses that

the expressions quoted therein were allegedly uttered by the petitioners "amongst themselves" i.e. amongst the petitioners and there was no third person present at that time either in the vicinity of or even at a distance from where he could have heard them or otherwise perceived the alleged humiliation caused to the said respondent. Being so, on the face of the complaint itself, there was no case made out for registration of the said complaint as a cognizable case under the Atrocities Act. For the same reason, there was no offence also revealed under any of the provisions of the Indian Penal Code also.

11. Apart from what is stated hereinabove, the materials placed on record, as rightly submitted by the learned Advocate for the petitioners, clearly reveal that the respondent No.3 lacked bona fide in lodging the said complaint in as much as that on 7-4-2004 a complaint was filed with the Administrative Judge of this Court by the Malegaon Bar Association against the said respondent stating therein that on 5-4-2004 while the Secretary of the Malegaon Bar Association had been to the Court of the respondent No.3, he was threatened that unless the Malegaon Bar Association takes steps to stop complaining against the respondent, he would lodge a complaint under the Atrocities Act against the petitioners. The said complaint was followed by an

action on the part of the authorities in the nature of withdrawal of all the judicial work from the respondent No.3 and allotment thereof to another Court and this was communicated to the respondent No.3 under the letter dated 15-4-2004 by the District and Sessions Judge of Nasik and it was received by the respondent No.3 on 16-4-2004. This obviously discloses that on account of refusal on the part of the members of the Bar at Malegaon to withdraw the complaints against the respondent No.3, by way of retaliation and as a counter to the complaints against him, the present complaint was lodged by the respondent No.3 against the petitioners. Undisputedly, the petitioners were the office bearers of the Malegaon Bar Association at the relevant time. This apparently discloses, as already observed above, lack of bona fide on the part of the respondent in lodging the complaint in question.

12. Lack of bona fide on the part of the respondent No.3 is further revealed from his conduct even during the pendency of this petition. It is to be noted that by the order dated 5-5-2004 when this Court was informed by the learned A.P.P. that the respondent No.3 was insisting for the police authorities to register his complaint against the District and Sessions Judge, Nasik, which was lodged by him on 30-4-2004, in fact by the order dated 21-4-2004 this Court had directed the

District and Sessions Judge, Nasik to furnish a detail report with regard to all the aspects of the matter by 5-5-2004, and in fact the report was furnished to this Court when the Bench was presided over by Shri Justices S. Radhakrishnan and R.S. Mohite, who on perusal thereof had ordered the said report to be kept under seal with the Registrar (Legal). Today it was ordered to be produced before us and has accordingly been produced before us under a sealed cover. The sealed cover is opened at this stage. On perusal of the said report, the same clearly reveals objectionable acts on the part of the respondent No.3 during his tenure as Magistrate in the Court at Malegaon. The report also raises doubt about the genuineness of the complaint lodged by the respondent No.3. The Registry is directed to keep this report with the annexures thereto on the service file of the respondent No.3.

13. In the facts and circumstances of the case, we are of the considered opinion that the investigation based on the impugned FIR would not lead to any fruitful result, except harassment to the petitioners. Taking into consideration all the aspects of the matter, therefore, the impugned FIR needs to be quashed and is accordingly hereby quashed.

14. The petition, therefore, succeeds. The FIR bearing

No.II C.R.No.3027/2004, registered with the Chavni police station, Malegaon, District Nasik against the petitioners at the instance of the respondent No.3 on 19-4-2004 is hereby quashed. The rule is made absolute accordingly. No order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)